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November 6, 2024

VIA ECF

Hon. Ronnie Abrams
United States District Court
Southern District of New York
40 Foley Square
New York, NY 10007

RE: *Gemini Trust Company LLC v. Financial Crimes Enforcement Network*, 24-mc-266 (RA)

Dear Judge Abrams:

This firm represents Gemini Trust Company, LLC (“Gemini”) in the above-captioned matter. As the Court may recall, this miscellaneous action concerns Gemini’s motion to compel the production of documents from the Financial Crimes Enforcement Network (“FinCEN”), pursuant to a subpoena duces tecum served in a related case pending before Judge Hellerstein, *Commodity Futures Trading Commission v. Gemini Trust Company, LLC*, No. 22-cv-4563-AKH (the “CFTC Action”).

By way of update, we write to apprise the Court that Judge Hellerstein has scheduled the CFTC Action for trial on January 13, 2025. As detailed in Gemini’s motion papers, the sought-after discovery is a critical piece of exculpatory evidence in the CFTC Action, and is therefore expected to feature prominently in Gemini’s defense case. To this end, Gemini respectfully requests that the Court schedule a status conference on its motion to compel, with a view towards resolving any open issues or questions before trial commences in January. Gemini is available to confer at the Court’s convenience.

FinCEN has provided the following statement concerning its position with respect to this request: FinCEN is happy to appear for a status conference at the Court’s convenience, if a conference would be helpful to the Court. However, FinCEN notes that the arguments set forth in its April 19, 2024, opposition (Dkt. No. 32) and July 9, 2024, letter (Dkt. No. 29), apply with even more force now, just two months before Judge Hellerstein is scheduled to conduct trial in *Commodity Futures Trading Commission v. Gemini Trust Company, LLC*, 22 Civ. 4563 (AKH) (the “CFTC Action”). In particular, it is too late for Gemini to: (1) use this miscellaneous proceeding to circumvent fact discovery in the CFTC Action, which closed in February 2024; and (2) introduce new evidence and new issues into that case, where Judge Hellerstein has already resolved summary judgment motions from both parties, denied a motion for a certificate of appealability, ordered motions *in limine* by November 15, and directed the parties to exchange trial exhibit lists in mid-December. *See, e.g.*, CFTC Action, Dkt. Nos. 149-50. At a minimum, if Gemini now wants to press the issue of its December 2023 subpoena, FinCEN respectfully submits that Judge Hellerstein should be afforded the opportunity in the first instance to consider Gemini’s

motion to compel in light of the history of discovery in the CFTC Action and its current pre-trial posture.

Sincerely,

/s/ John F. Baughman

cc: All counsel of record

Application denied. The Court is aware of the trial date in the CFTC Action and will issue an order on Gemini's motion to compel in due course, with sufficient time to permit the parties to prepare for trial.

SO ORDERED.

A handwritten signature in blue ink, appearing to be 'R. Abrams', written over a horizontal line.

Hon. Ronnie Abrams

November 7, 2024